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IN THE

Supreme Court of the United States

October Term, 1959
No. 124

JUANITA DALE PHILLIPS,

Petitioner,

vs.

THE STATE OF TEXAS.

On Petition for Writ of Certiorari to the Court of Criminal Appeals of Texas.

Application for Leave to File Supplemental Memorandum in Support of Petition for Writ of Certiorari; and Memorandum.

A. L. WIRIN.
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California.
JOE TONAHILL,
Tonahill Building,
Jasper, Texas,
MELVIN BELLI,
240 Stockton Street,
San Francisco, California.
JULIUS LUCIUS ECHELES,
33 North La Salle,
Chicago 2, Illinois.
Attorneys for Petitioner.

The Myers Legal Press, Los Angeles. Phone MA. 5-8820.

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Subsequent to the filing of the Petition for Writ of Certiorari herein, counsel for petitioner have had an opportunity to see the brief for petitioner in *Rios v. United States*, No. 52, October Term, 1959 in this Court and the jurisdictional statement in *Eaton v. Price*, No. 30, October Term, 1959, in this Court.

While those cases are different from the instant case,[1] there are considerations in both those cases of sufficient

[1] *Eaton v. Price* is not too different. Although the precise question before this Court is the validity of a municipal ordinance which allows health inspection without a warrant, broadly speaking, it can be said that the whole subject of the admissibility of illegally obtained evidence in a state court, and its relationship to the Fourteenth Amendment is also involved.

relationship to this one—considerations felt important enough for this Court to grant hearings (27 L. W. 3293 and 3348)—as to make it appropriate, in our judgment, to point them out as additional reasons for certiorari to be granted herein.

Accordingly, application is made for leave to file the memorandum attached hereto.

Respectfully submitted,

A. L. Wirin,
Fred Okrand,
Joe Tonahill,
Melvin Belli,
Julius Lucius Echeles,
Attorneys for Petitioner.

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In the jurisdictional statement in *Eaton v. Price* (No. 699, Oct. Term, 1958; now No. 30, Oct. Term, 1959), page 13, footnote 5, the following appears:

"Appellant expects, if granted a hearing on the merits of this appeal, to present and argue this important question.[1] While the issue may be considered by many to be closed (*Wolf v. Colorado, supra*), respectable opinion to the contrary seems to exist. (See dissenting opinion of Mr. Justice Black in *Adamson v. California*, 332 U. S. 46, 68, and

[1]The text to this footnote reads:

"Aside from the question whether the Fourth Amendment should be given effect against the State in the circumstances of the instant cause,[5] . . ."

opinions in *Wolf v. Colorado, supra*, of Mr. Justice Black (338 U. S. 25, 40), concurring, and Mr. Justice Rutledge [338 U. S. 25, 47], dissenting.)"

As seen, this Court noted probable jurisdiction (27 L. W. 3348). Accordingly, if the question of the direct applicability of the Fourth Amendment to the States is to be considered by this Court, the granting of certiorari in the instant case would seem indicated, for, in that event, it is the more clear that petitioner's constitutional right to freedom from unreasonable searches and seizures was violated.

The considerations which led this Court to grant certiorari (27 L. W. 3293) in *Rios v. United States* (No. 854, Oct. Term, 1958; now No. 52, Oct. Term, 1959), are we believe, likewise present in the instant case. While it is true that the *Rios* case has to do with the admissibility in the Federal courts of evidence illegally obtained by State officers, the granting of certiorari in that case evidences this Court's continuing concern with the problems inherent in federalism (*cf. Bartkus v. Illinois*, 359 U. S. 121; *Abbate v. United States*, 359 U. S. 187). In reality, the instant case is but another facet of the problem present not only in the *Rios* case, but also that present in *Rea v. United States*, 350 U. S. 214. In the latter case, this Court held that a federal officer who obtained evidence illegally should be enjoined from testifying thereto in the State court. In the case at bar, the dignity and purity of federal authority is equally present in the form of the Texas statute which prohibits the receipt of evidence ob-

tained in violation of the Constitution of the United States. This being so, the question is of sufficient importance to warrant a hearing by this Court.

Conclusion.

The petition for writ of certiorari should be granted.

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
JOE TONAHILL,
MELVIN BELLI,
JULIUS LUCIUS ECHELES,
Attorneys for Petitioner.